***THE HONOURABLE SRI JUSTICE V.ESWARAIAH**

+WRIT PETITION NO. 3752 OF 1997

%Dated 17-02-2005

 # The Divisional Manager, APSRTC.,
Jaggaiahpet, Krishna District.

..... PETITIONER

AND

$1. The State Transport Appellate Tribunal,

rep., by its Presiding Officer,
A.P., Hyderabad.
2. The Regional Transport Authority,

Rep. by its Secretary,
Vijayawada, Krishna District.
3. Smt.T.Pushpa W/o.Sri.T.Bala Rao
R/o.6-57, Seetarampuram, Jaggaiahpet,
Krishna District.

.....RESPONDENTS

! COUNSEL FOR THE PETITIONER: Mr. K.SRINIVASA RAO

^ COUNSEL FOR THE RESPONDENTS: Mr. NOUSHAD ALI

< Gist:

> Head Note:

? Cases referred:

1. 2000(1) ALD 37

2. 2002(1) ALD 784

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 3752 of 1997

Between:

The Divisional Manager, APSRTC.,
Jaggaiahpet, Krishna District.

..... PETITIONER

AND

1 The State Transport Appellate Tribunal,

rep., by its Presiding Officer,
A.P., Hyderabad.
2 The Regional Transport Authority,

Rep. by its Secretary,
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R/o.6-57, Seetarampuram, Jaggaiahpet,
Krishna District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records relating to the order in A.P.No.313/95, Dt.12/12/96 on the file of the 1st Respondent herein and quash the same by way of issue of a Writ of Certiorari or any other appropriate writ or order or orders.

Counsel for the Petitioner: Mr. K.SRINIVASA RAO

Counsel for the Respondents: Mr. NOUSHAD ALI

The Court made the following :

ORDER:

The Divisional Manager, APSRTC., Jaggaiahpet, Krishna District filed this Writ Petition praying to call for the records relating to the order in A.P.No.313 of 1995 dated 12-12-1996, on the file of the

1st respondent herein and to quash the same by way of issue of a writ of Certiorari or any other appropriate writ or order.

2. The main controversy between the parties is in relation to the fact whether the route in question is a town service route or not. The 2nd respondent-Regional Transport Authority had recorded a reasoning that the APSRTC is running adequate number of services in the route, in question, and the length of the route is too short for a private operator to operate buses and hence, the Regional Transport Authority feels that there is no necessity for increase of more buses on this route and accordingly, the application had been rejected. Aggrieved by the same, the 3rd respondent herein, Smt. T.Pushpa-the applicant preferred A.P.No.313 of 1995 before the 1st respondent-the State Transport Appellate Tribunal, A.P. Hyderabad and the appellate authority recorded a finding that the route, in question, is a town service route and hence, the prohibition imposed by the scheme or the provisions of the Motor Vehicles Act, 1988 (in short, "the Act") would not come in the way of granting permit in favour of the applicant in relation to the said route and accordingly, allowed the appeal by order dated

   12-12-1996. Aggrieved by the same, the Divisional Manager, APSRTC., Jaggaiahpet, Krishna District had filed the present Writ Petition praying for the issuance of a writ of Certiorari.

3. Sri Srinivasa Rao, learned standing counsel representing the APSRTC would maintain that the 2nd respondent-Primary authority, in fact, made the order only by circulation and at this stage, no opportunity had been given to the APSRTC. The learned counsel also pointed out that merely because the route falls within the definition of 'town service route' within the meaning of Rule 258 of the A.P.Motor Vehicles Rules, 1989 (for short, "the Rules"), automatically, the 3rd respondent is not entitled to a permit and it is for the primary authority-Regional Transport Authority to exercise the discretion. When certain findings had been recorded by the primary authority in this regard and the application had been rejected, the appellate authority, the State Transport Appellate Tribunal is not justified in disturbing the same. The learned counsel also made certain submissions relating to the meaning of 'all-weather route'. Ultimately, the counsel had stressed on the interest of the public transport undertaking-the APSRTC, which would be involved in the said matter, if the statutory provisions are contravened or if such permits are granted in contravention of the scheme, the statutory provisions and the rules governing the field.

4. The learned Government Pleader for transport had submitted that this is a matter in which, the very question to be decided is whether the route in question is a town service route or not and whether it escapes the rigour of the scheme or not. The learned Government Pleader had also taken this Court through the findings recorded in this regard.

5. Sri Naushad Ali, the learned counsel representing the 3rd respondent, the appellant before the State Transport Appellate Tribunal and the applicant before the Regional Transport Authority, would submit that the Act, in fact, had not defined the expression "town service route" and for this purpose, Rule 258 of the Rules may have to be looked into. The learned counsel also would submit that the expressions 'all-weather route' and 'fair-weather route' would not be relevant at all in relation to the grant of permits under the Act and these expressions may be relevant in the context of the provisions of the A.P.Motor Vehicles Taxation Act, 1963 and the Rules framed thereunder. The learned counsel would submit that unnecessarily these expressions are being imported which are alien to the present controversy. The learned counsel also had taken this Court through the order made by the primary authority and also the appellate authority and had pointed out Sections 70,72, 100

and 104 of the Act and also Rule 258 (2) of the Rules, in particular. The counsel also pointed out that even before the primary authority, opportunity had been given to the APSRTC, and hence the stand taken by the APSRTC that, no opportunity had been given, cannot be sustained. Learned counsel also placed strong reliance on the judgment of this Court in W.P.No.10485 of 1991 and batch, dated 14-08-1991, which had been carried in appeal in W.A.No.1130 of 1991 and batch, dated 07-11-1991. The learned counsel ultimately would conclude that in view of the limitations imposed on this Court, while exercising the certiorari jurisdiction, clearly a finding of fact recorded by the appellate authority needs no disturbance at the hands of this Court and hence, the said findings are to be confirmed and accordingly, the writ petition is bound to fail.

6. The 3rd respondent-applicant filed an application before the 2nd respondent for grant of one pucca Stage carriage permit on the all-weather route, Jaggaiahpet, Tirumalagiri, Via Chillakasllu, A.P.S.E.B., Sub-station. The total length of the route is 8.4 kilometers and it overlaps notified routes in G.O.Ms.No. 435 dated 20-09-1988 and G.O.Ms.No.352 dated 29-06-1990. The particulars of overlapping as stated by the writ petitioner are as hereunder:

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respondent through its resolution R.No.70867/A3/93 in item No.2. Apart from this, APSRTC is also operating sufficient number of trips catering the needs of the traveling public. Hence, there is no need to add any more permits on the proposed route. It is stated that aggrieved by the order of the 2nd respondent, the 3rd respondent herein filed an appeal in A.P.No.313 of 1995 before the 1st respondent and the same was allowed. It is further stated that the route in question is all-weather route and it is covered by the notified routes. The proposed route overlaps the notified route in G.O.No.435, dated 20-09-88, and G.O.Ms.No.352, dated 29-06-1990, to a distance of 4.5 kilometers to Jaggaiahpet to Chillakallu, whereas the conditions of the scheme prohibits overlapping on such notified routes. Hence, it is stated that the order of the appellate authority is contrary to the conditions of the scheme and also in violation of Section 104 of the Motor Vehicles Act, 1988. The 2nd respondent-Regional Transport Authority, while considering the applications in relation to circulation agenda item No.2 made the following order.

> "The applications are examined. The APSRTC is running adequate number of services on this route. The route length is too short for a private operator to operate. The R.T.A. feels that there is no necessity for increase of more buses on this route.
>
> Hence the applications are rejected"

8. Aggrieved by the said order, the 3rd respondent preferred an appeal on the file of the 1st respondent herein and the relevant portion of the order made by the 1st respondent reads as hereunder:

> "The learned Advocate for APSRTC argued the route cannot be treated as town service route as the applicant failed to mention the nature of the route in Form prescribed for an application. While replying to this kind of argument, the learned advocate for appellant argued there is no column in the application form to indicate whether it is a town service route or a mofussil service route. He further argued the appellant has clearly expressed his intention for the route in question has to be treated as to service route in his letter which is mentioned at paged 35 of the records. He further also argued in the writ petition which is mentioned at page.37, the A.P.High Court treated the route in question as a town service route.

It is clear in the application of the appellant, it is not mentioned whether the route in question is a town service route or mofussil or service route. Further it is clear, there is no column to mention about the nature of route. Thus, simply because the appellant has not mentioned the nature of route as a town service route. It cannot be called as mofussil route. The appellant clearly expressed his intention for the route in question as a town service route. This we find at page. 35. This letter is addressed to D.T.C. dated 02-09-1995. In this the appellant mentioned the nature of the route in question is as one of the town service route. The evidence is sufficient to treat the route in question as a town service route. It is clear in the W.P.No.18306 of 1995 the portion wherein the nature of case is mentioned, it is mentioned the route in question is as a town service route. By giving regard to the above evidence, I treat the present route in question is a town service route"

9. On a careful scrutiny of the findings recorded at para.10 of the impugned order, it is clear that a finding had been recorded that the route in question is a town service route. No doubt, submissions at length were made by the learned standing counsel representing APSRTC that it is within the discretion of the primary authority, either to grant or reject permit and such discretionary power vested in the primary authority could not have been disturbed by the State Transport Appellate Tribunal. If the said contention is to be accepted, the appellate Tribunal, in fact, cannot disturb several of the orders and this Court is not inclined to accept the said submission. The appellate Tribunal is having power to reconsider all the aspects and the same had been done in the present case too. Section 104 of the Motor Vehicles Act, 1988 reads as hereunder:

"**Restriction on grant of permits in respect of a notified area or notified route**:--- Where a scheme has been published under sub-section (3) of Section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme:

Provided that where no application for a permit has been made by the State Transport undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or

notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport undertaking in respect of that area or route".

Rule 258(2(ii) of the Rules reads as hereunder:

"The Regional Transport Authority shall subject to the following restrictions, determine which town service routes:-

(ii) No route of town service shall extend more than 8 kilometers beyond the limits of the municipality or town from which it starts, provided that this restriction shall not apply to any town service routs, which were in existence on the date of coming of these rules into force or in respect of those rules for which specific permission of the transport Commissioner is obtained".

10. As can be seen from the findings recorded, especially that had been recorded even by the primary authority on the strength of the survey report of the Motor Vehicles Inspector, Nandigama, the distance within the municipal limits being 3.8 kilometers and the distance between the municipal limits being 4.6 kilometers, this Court is of the considered opinion that the finding of fact recorded by the 1st respondent that it is a town service route need not be disturbed and accordingly, the same is hereby confirmed.

11. It is not in serious controversy between the parties that if it is a town service route, it may fall outside the rigour of the scheme or the prohibition imposed by the statutory provisions under the Act. Reliance was placed on the decisions in W.P.No.10485 of 1991 and batch, dated 14-08-1991, and also W.A.No.1130 of 1991 and batch, dated 07-11-1991, in this regard. In **DIVISIONAL MANAGER, APSRTC, RAJAHMUNDRY v. CH.NAGAMANI AND OTHERS** it was held that the Act does not define the term 'town service route'. Rule 258 of the Rules has defined this term. According to that rule, determination as a town service is the *sine qua non* for a route to escape the rigour of the prohibition contained in the approved schemes. In **G. ARJUNA RAO v.APSRTC, MUSHEERABAD, HYDERABAD & OTHERS**, it was held that no authority under the Act is entitled to direct issue of pucca carriage permit without complying with the mandatory provisions of Rule 258(2)(ii) of the Rules(referred to supra).

12. In the light of the clear findings recorded by the State Transport Appellate

Tribunal, A.P., Hyderabad, the 1st respondent herein and also in view of the limits imposed on this Court, while exercising the certiorari jurisdiction, this Court is of the considered opinion that it is not a fit matter to disturb the impugned order, while exercising the power under Article 226 of the Constitution of India.

13. Therefore, for the foregoing reasons, the Writ Petition fails and accordingly, the same shall stand dismissed. No order as to costs.

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(P.S.NARAYANA,J)

17th February, 2005.

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Note: LR Copy to be marked

One Fair copy to the Honourable Mr.Justice P.S.Narayana (For the Lordships kind perusal)

To

1. The Presiding Officer,

State Transport Appellate Tribunal,

A.P., Hyderabad.

2 The Secretary,

Regional Transport Authority,

Vijayawada,

Krishna District.

3 One CC to Mr.K.Srinivasa Rao

4 One CC to Mr. Naushad Ali

5 Two CD copies

6 The Under Secretary, Union of India, Ministry of Law,

Justice & Company Affairs, New Delhi.

7 The Secretary, A.P.Advocates' Association Library,

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8 Eight L.R.Copies.